



INDIRECT TAX NEWSLETTER

June 2026

I. EU CASE LAW

Judgment of the Court of Justice of the European Union (First Chamber), 30 April 2026. Case C-544/24 (Nekilnojamojo turto valdymas BUAB)

Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 273 — Article 49(3) of the Charter of Fundamental Rights of the European Union — Obligations considered necessary to ensure the correct collection of VAT and prevent fraud — National legislation establishing a system of late-payment interest on overdue VAT debts — Charging of late-payment interest — Principle of proportionality.

The dispute originated in a tax inspection carried out on the Lithuanian company Nekilnojamojo turto valdymas BUAB, in which it was found that the company had deducted VAT stated on invoices lacking legal validity and had participated in transactions involved in VAT fraud, corresponding to the period 2012-2016. As a result of that inspection, the Lithuanian Tax Authority established an additional VAT amount, together with late-payment interest and a tax penalty.

After exhausting the administrative and judicial remedies without success, the company applied in 2024 for exemption from the portion it classified as punitive of the interest, on the grounds that it had been calculated retroactively throughout the entire inspection and judicial proceedings period, between 2013 and 2021.

The appellant argued before the Lithuanian Economic-Administrative Court that the punitive component of the late-payment interest was disproportionate, and requested exemption from payment of that portion.

The Tax Authority rejected the application on the grounds that the law does not provide for any possibility of exempting the taxpayer from the payment of interest outside the cases exhaustively listed, and that modifying the applicable rate would breach the principle of equality among taxpayers.



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The referring court questioned whether this regulation was compatible with EU law, in particular with Article 273 of the VAT Directive and the principle of proportionality, as well as whether the punitive component of the interest could constitute a criminal penalty for the purposes of Articles 49 and 50 of the Charter of Fundamental Rights.

The first preliminary question, concerning the *ne bis in idem* principle under Article 50 of the Charter, was declared inadmissible. The Court recalled that this principle only applies where there is a final decision of conviction or acquittal for the same facts, and that in the present case the criminal proceedings brought against the company were still pending and had not concluded with any final decision. The possibility of accumulation between proceedings (administrative and criminal) that concerned the referring court did not therefore trigger the prerequisite of Article 50 of the Charter at the time the question was raised, so that it was inadmissible to examine whether Lithuanian legislation ensured adequate coordination between both proceedings.

In order to determine whether Article 49 of the Charter (proportionality of penalties) was applicable to late-payment interest, the Court applied the three classic criteria from the *Engel* case law, a doctrine of the European Court of Human Rights: the legal classification in domestic law, the nature of the offence and the severity of the penalty. The Court concluded that late-payment interest does not have a criminal character because, under Lithuanian law, it is not classified as a criminal penalty, its essential purpose is preventive and compensatory (to encourage timely payment and compensate the State for the economic loss suffered), and its significance does not reach the threshold of severity required to confer such character, also in accordance with the case law of the European Court of Human Rights.

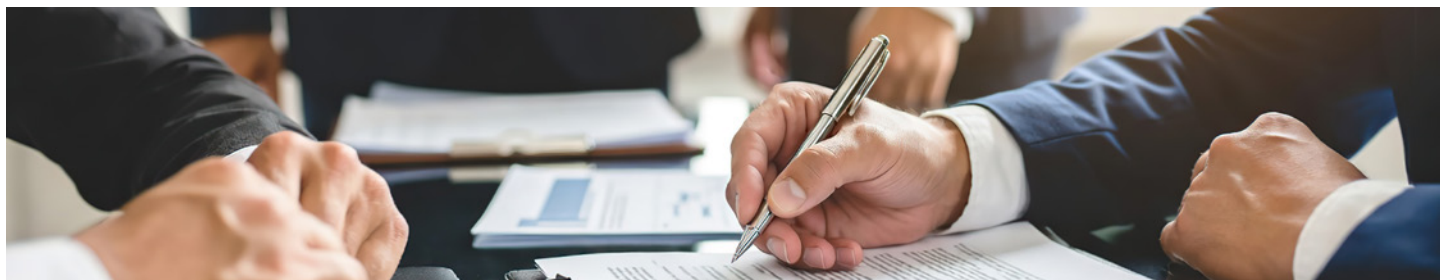
Having ruled out the application of Article 49 of the Charter, the Court analysed whether the interest was compatible with the general principle of proportionality, applicable whenever Member States implement EU law. The Court noted, first, that the late-payment interest mechanism pursues a legitimate objective recognised by EU law, namely ensuring the correct collection of VAT and combating fraud, in accordance with Articles 273 of the VAT Directive and 325 TFEU.

As regards the suitability and necessity of the measure, the Court considered that the interest is appropriate to achieve those objectives in a coherent and systematic manner, and indispensable to encourage taxpayers to fulfil their obligations on time; without it, those who do not pay obtain additional liquidity and an economic advantage corresponding to the depreciation over time of the real value of the debt. On proportionality in the strict sense, the Court noted that the fixed rate ensures transparency, objectivity and equal treatment among taxpayers, and that the lack of discretion on the part of the Tax Authority protects taxable persons against arbitrary decisions; the fact that the interest cannot be individualised according to the nature and gravity of the infringement does not render the measure disproportionate.

The Court also rejected the argument that interest accumulated during the inspection procedure and judicial proceedings is disproportionate, since if, at the end of the proceedings, the tax liability is confirmed, not computing that period would amount to granting the taxpayer a cash-flow advantage over those who fulfil their obligations on time. The Court further recalled that Lithuanian law does provide for the possibility of exemption from interest in specific and exhaustively listed cases, such as where the taxpayer demonstrates absence of fault or where the infringement is due to erroneous explanations by the Tax Authority itself.

The Court of Justice ruled that Article 325 TFEU and Article 273 of the VAT Directive, read in the light of the principle of proportionality, do not preclude national legislation which establishes the procedure for calculating late-payment interest on overdue VAT debts irrespective of the nature and gravity of the infringement, and which excludes the possibility for the Tax Authority to apply a lower rate or waive the calculation of part of that interest, except in the cases exhaustively defined by that legislation.



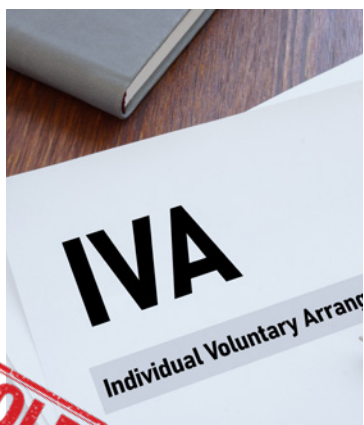


Opinion of Advocate General José Martín y Pérez de Nanclares, 13 May 2026. Case T-366/25 (D.B.)

Reference for a preliminary ruling — Taxation — Common system of VAT — First paragraph of Article 19 of Directive 2006/112/EC — Concept of “transfer of a totality or part of assets” — Donation of a business, in two equal parts, to two natural persons who intend to contribute them in kind to a general partnership — Plurality of beneficiaries — Analysis of a series of transactions — Concept of “economic reality”.

The present case, referred to the General Court by the Supreme Administrative Court of Poland, concerns D.B., a sole trader subject to VAT who intends to donate the entirety of her business to her two daughters, transferring 50% of it to each of them. The daughters, who co-manage their own general partnership, in turn intend to immediately contribute their respective shares to the capital of that partnership, which would continue the activity of their mother's business in a substantially unchanged manner. The preliminary question consists in determining whether this sequence of transactions falls within Article 19 of the VAT Directive, which allows the transfer of a totality or part of assets to be treated as not constituting a supply of goods subject to the tax.

According to the case law of the Court of Justice, the application of Article 19 of the Directive requires the fulfilment of two cumulative conditions: on the one hand, that the transfer enables the continuation of an autonomous economic activity, which implies that the totality of the elements transferred is sufficient for that purpose; on the other hand, that the beneficiary effectively intends to carry on such activity and not simply to liquidate it or sell the assets.



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These two conditions must be verified in relation to each individual transaction, and failure to meet them excludes the application of the provision without the need to examine the remaining elements.

The Advocate General highlights that the first paragraph of Article 19 uses the term beneficiary in the singular in all language versions, which, in his view, implies that the transfer of a totality of assets (total or partial) can only be made in favour of a single beneficiary. This conclusion is supported not only by the literal wording of the provision but also by the teleological interpretation, arguing that Article 19 operates on the principle that the beneficiary continues the personality of the transferor, assuming its rights and obligations in respect of VAT, which requires that there be a single person responsible for that fiscal continuity.

Analysing each transaction separately, the Advocate General concludes that neither of the two daughters, individually, is in a position to carry on an autonomous economic activity, each of them being the holder of only 50% of the business, given that the division does not consist in concretely distributing assets between the daughters so that each can operate independently, but rather in transferring an undivided share over the entirety of the business assets. The first condition of Article 19 is not met in respect of any of the transactions considered individually, which suffices to exclude the application of the provision.

The Advocate General also notes that the second condition (the intention to continue the activity) is likewise not met, since the daughters do not intend to become taxable persons for VAT purposes or to assume D.B.'s rights and obligations vis-à-vis the Tax Authority, but rather to transfer their shares in turn to their partnership. In other words, the daughters act as mere links in a chain of transfers, without any genuine intention to carry on the activity on their own account.

Notwithstanding the foregoing, the Advocate General examines the possibility of analysing the set of transactions as an indivisible whole, with a view to identifying the daughters' partnership as the true beneficiary, being the entity that will ultimately continue the activity. Under this approach, priority would be given to the final result (the continuation of the business) over the specific legal form chosen by the parties. However, the Advocate General is not persuaded by this alternative approach.

The reasons for rejecting the joint analysis are as follows: the transactions involve different persons, each of them can exist independently while retaining full economic meaning, there is no principal and ancillary supply, and the case law of the Court of Justice warns against requiring the Tax Authority to investigate the intention of the parties in order to classify the transactions. Moreover, if the application of Article 19 were conditional on the intermediate acquisition immediately following the final one, the question of what is to be understood by immediately would inevitably arise, generating legal uncertainty.

Consequently, the Advocate General proposes that the General Court should answer that Article 19 of the VAT Directive must be interpreted as meaning that there is no transfer of a totality of assets where a taxable person transfers gratuitously the entirety of his or her business to two natural persons in equal parts (50% to each), who are not taxable persons and who intend to immediately contribute their shares to a general partnership that carries on an economic activity of which they are partners.

judgment of the Court of Justice of the European Union (Ninth Chamber), 13 May 2026. Case C-603/24 (Stellantis Portugal)

Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 77/388/EEC — Article 2(1) — Chargeability to VAT — Supplies of services effected for consideration — Criteria — Intra-group relationships — Transfer pricing adjustments for motor vehicles between manufacturers and distributors — Consideration of vehicle repair costs borne by distributors after sale — Existence of a direct link between the supply of services and the consideration actually received — Existence of a legal relationship involving reciprocal performance.

The dispute originated in a request for a preliminary ruling submitted by the Supreme Administrative Court of Portugal in the context of proceedings between Stellantis Portugal, S.A., as legal successor of General Motors Portugal (GMP), and the Portuguese Tax and Customs Authority, concerning the chargeability to VAT of certain motor vehicle repair services that GMP allegedly supplied to other companies within the General Motors group. The group was structured around two types of companies: original equipment manufacturers (OEMs), which manufactured and supplied the vehicles, and national sales companies/organisations (NSC/NSO), responsible for distribution in a given territory; GMP performed the NSC/NSO functions in Portugal, purchasing vehicles from the European OEMs and reselling them to independent dealers who, in turn, marketed them to the end customer.



When vehicles presented manufacturing defects, anomalies covered by the manufacturer's warranty or required roadside assistance, customers took them to the dealers for repair, and the dealers invoiced GMP for the corresponding costs with the applicable VAT. GMP, in turn, informed the OEMs of all costs it bore in distribution, including repair costs together with its own operating costs, such as personnel, electricity and marketing costs. This flow of information was part of a broader mechanism of intra-group relationships combining the sale of vehicles with compensation of the distributor's costs.

Under a contract entered into between the group companies, the OEMs could make adjustments to the transfer prices of the vehicles in order to guarantee the NSCs/NSOs a predetermined profit margin. Therefore, at the end of each reference period, the OEMs issued, depending on the actual results, a credit note in the name of GMP, so that the effective margin would coincide with the agreed margin. The contract thus regulated the intra-group pricing policy, but none of its clauses made explicit reference to an obligation on GMP to repair vehicles in exchange for any remuneration.



Following an inspection relating to fiscal year 2006, the Tax Authority drew up a report in which it considered that the responsibility for remedying manufacturing defects and warranty anomalies lay with the OEMs, and that the repair costs, initially borne by GMP, were passed on to them through the transfer pricing adjustments, so that GMP would have supplied vehicle repair services within the national territory, subject to VAT. Consequently, the Tax Authority required GMP to pay a substantial amount in respect of VAT due and compensatory interest.



GMP challenged the assessment before the Administrative and Tax Court of Sintra, which upheld its appeal; however, the Tax Authority appealed to the Southern Central Administrative Court, which ruled in favour of the Tax Authority. Against that judgment, GMP (which had in the meantime become Opel Portugal and was subsequently absorbed by Stellantis Portugal) brought an appeal on a point of law before the Supreme Administrative Court, which decided to stay the proceedings and refer a preliminary question to the Court of Justice on whether the transfer pricing adjustment could constitute the consideration for a supply of services effected for consideration.

The Court of Justice recalled its settled case law according to which a supply of services is effected for consideration, within the meaning of the VAT Directive, only where there is a direct link between that supply and a consideration actually received, which requires that between the supplier and the recipient there be a legal relationship involving reciprocal performance and that the remuneration constitute the actual consideration for an identifiable service. Applying this to the specific case, the Court examined whether the contract and the price adjustments deriving from it satisfied these requirements.

The Court noted that the only legal relationship between GMP and the OEMs mentioned by the referring court was that resulting from the contract, the purpose of which was the setting of transfer prices and the guarantee of a profit margin for the distributor, without any of its clauses revealing that GMP assumed an obligation to repair vehicles in exchange for remuneration.

Moreover, the adjustments were calculated on the basis of all of GMP's costs (both repair and operating costs), so that repairs were merely one of the parameters of the calculation, and GMP had no guarantee that, once the predetermined margin was reached, the OEMs would specifically reimburse those costs.

In view of the foregoing, the Court concluded that the relationship between the possible repair services and the transfer pricing adjustments was, at most, indirect, also dismissing the argument of the Portuguese Government that GMP had acted as an intermediary on behalf of the OEMs, as there were no elements in the file to substantiate this.

The Court ruled that Article 2(1) of the VAT Directive must be interpreted as meaning that a transfer pricing adjustment established in an intra-group contract to guarantee a predetermined profit margin, documented by means of credit notes and calculated on the basis of repair and operating costs, does not constitute the consideration for a supply of services effected for consideration, unless there exists between the companies a legal relationship with reciprocal commitments the specific object of which is the provision of repair services and the payment of remuneration directly linked thereto in the form of an adjustment.

II. DOMESTIC COURT JUDGMENTS

Judgment of the Supreme Court No. 343/2026, of 19 March 2026 (appeal 6701/2023).

In this case, the appeal in cassation was brought by Accura Bruc S.L., a company that provides swimming courses for babies and children and padel and tennis courses for children and young people, against the judgment of the High Court of Justice of Catalonia which had dismissed its claim to be taxed at the reduced VAT rate of 10% for the services provided during the quarters of fiscal year 2017. The Tax Authority, upheld by the Regional Economic-Administrative Court of Catalonia and the High Court of Justice, considered that the applicable rate for such supplies was the standard rate of 21%, as the requirements that would have allowed their taxation at the reduced rate were not met. The question in cassation raised a broader interpretative debate, since the answer would determine whether any sports course aimed at minors may benefit from the reduced rate, or whether something more than the mere status of the recipients is required.

The Supreme Court admitted the appeal on the grounds of objective interest in cassation for the formation of case law, identifying as the relevant question whether the application of the reduced rate of 10% provided for in Article 91.One.2.7 of the VAT Law, in relation to services for the protection of children and young people, requires that the activities be framed within specific programmes aimed at persons who are actually or potentially vulnerable. The appellant argued that the provision does not require this additional condition and that the mere fact that the recipients are under 25 years of age was sufficient for the application of the reduced rate.

The Chamber established its criterion on the basis of the internal structure of the VAT Law, determining that the reduced rate under Article 91.One.2.7 operates by reference to the exemption in Article 20.One.8, so that in order to qualify for the reduced rate, the services must, first, be objectively capable of falling within that exemption, even if they cannot benefit from it because they do not meet the subjective requirement (public entity or entity of a social nature). And the exemption requires that the services be social welfare services and, moreover, be aimed at the protection of children and young people. It is therefore not sufficient that the recipients be under 25 years of age; the activity must have a protective dimension, linked to the care of situations of need, vulnerability or social deprivation.

The Court supported its interpretation with the definition of social welfare drawn up by the General Technical Secretariat of the Ministry of Social Affairs, which conceives it as the set of actions aimed at addressing situations of need and other deprivations of

certain groups, and with the constitutional nature of the subject matter, noting that the purely private activity of providing sports courses for children and young people, outside any idea of protection against situations of vulnerability, cannot be regarded as social welfare for the purposes of VAT legislation.

From the perspective of EU law, the Court examined the VAT Directive and concluded that Articles 132(1)(g) and (h) of the Directive require, respectively, that the supplies be closely linked to welfare and social security work, or to the protection of children and young people, and that they be carried out by bodies governed by public law or by other organisations recognised as charitable by the Member State concerned. The term protection used by the EU provision implies something more than a mere contractual activity aimed at minors, and in the same Directive the exemption is inextricably linked to the nature of the supplier, an element which was also absent in the case of Accura.

The Court applied the CJEU case law, stating that the concept of supplies of services closely linked to the protection of children and young people does not cover the teaching of surfing and sailing provided by specialised schools, regardless of whether that teaching is provided in the context of a study trip. The analogy with the Accura case is clear: swimming, padel and tennis courses for minors provided by a commercial company operating for profit, without any link to a programme addressing vulnerability, are equally remote from that concept.

The Court added a reflection on the principle of fiscal neutrality, noting that the application of reduced rates must not distort free competition between undertakings carrying out similar activities; allowing sports courses for minors to be taxed at 10% while the same courses for persons over 25 are taxed at the standard rate would create unequal treatment not justified by any objective difference related to social welfare.

The Supreme Court established as case law that the application of the reduced rate of 10% provided for in Article 91.One.2.7 of the VAT Law, in relation to services for the protection of children and young people, requires that the activities be framed within specific programmes aimed at persons who are actually or potentially vulnerable, and that, therefore, it is not sufficient that the services provided are aimed at children or young people under 25 years of age for the activity to benefit from that reduced rate. With this doctrine, the Court upheld the judgment of the High Court of Justice of Catalonia and dismissed the appeal in cassation brought by Accura Bruc, consolidating a restrictive but coherent interpretation in line with EU law and the purpose of the exemption rules in the field of VAT.



Judgment of the Supreme Court No. 1419/2026, of 24 March 2026 (appeal 7451/2021).

The present appeal in cassation was brought by Compañía de Distribución Integral Logista S.A. against the judgment of the National High Court which had dismissed its appeal against the assessments issued by the Central Delegation for Large Taxpayers in respect of External Tariff and VAT, corresponding to fiscal years 2012 to 2015. The dispute centres on the determination of the customs value of goods managed by Logista through a customs warehouse, and on the validity of the preferential origin certificates used in those transactions. The issue is relevant from a VAT perspective because the taxable amount of the tax on importation is calculated on the customs value, so that its incorrect determination directly affects the amounts of tax due.

The operational scheme consisted of a chain of successive sales: the goods were the subject of a first transaction by which they were introduced into the customs territory of the European Union and placed under the customs warehousing procedure, and were subsequently the subject of a second transaction by which they were released for free circulation through the simplified procedure. This structure raised two legal questions: first, at what point in time the reference for calculating the customs value should be placed (at the time of placement in the warehouse or at the time of release for free circulation); second, whether origin certificates presented after the expiry of the two-year validity period could still be valid where the same certificate had been used within the validity period for prior partial clearances of the same consignment.

In view of the interpretative doubts, the Supreme Court stayed the proceedings and referred a preliminary question to the Court of Justice, formulating five questions concerning the interpretation of the Community Customs Code and its Implementing Regulation. The questions addressed, among other issues, whether the placement of goods in a customs warehouse under the simplified procedure allows a presumption that the sale was made for export to the European Union, and which sale is the relevant one for the purposes of the Customs Code in determining the transaction value in the context of successive sales.

The Court of Justice responded by judgment of 30 October 2025 (Case C-348/24) to the effect that, where goods have been the subject of a first transaction by which they were introduced into the customs territory of the Union and placed under the customs warehousing procedure, and are subsequently the subject of a second transaction by which they are released for free circulation through the simplified procedure, the reference point for determining their customs value is the time of placement under that procedure, and the transaction value of the first sale may be used for that purpose.

This interpretation benefits the operator because it allows the valuation to be anchored to the time of the original purchase, which in many cases may differ from the subsequent resale price.

However, as regards the origin certificates, the CJEU ruled unfavourably for Logista, establishing that the customs authorities of the country of importation are not obliged to accept, for the purposes of applying tariff preferences to goods, a proof of origin that has been presented to them after the expiry of its period of validity, even though that same proof of origin had already been presented to the authorities before the expiry of its period of validity in order to apply tariff preferences to other goods from the same consignment. The rule is, therefore, that each clearance is an autonomous transaction requiring its own validly presented documents.

Having received the preliminary ruling, the Supreme Court resumed the proceedings and proceeded to apply the CJEU's doctrine to the specific case. As regards the customs value, the judgment confirms that the relevant transaction value is that of the first sale that gave rise to the introduction of the goods into the customs warehouse. This conclusion has direct effects on the taxable amount of VAT on importation, since the tax is calculated on that customs value.

As regards the origin certificates, the Supreme Court also confirmed the CJEU's criterion and concluded that Logista is not entitled to the tariff benefit by preferential origin in those clearances in which the certificates were presented after the expiry of the two-year validity period from their issuance, unless exceptional circumstances apply; however, if the goods form part of the same consignment in respect of which prior partial clearances had already taken place, the Tax Authority must state the reasons for its refusal where, as a result of that delay, its powers of verification were prejudiced, altered or compromised.

The appellant had requested a declaration that the presentation of origin certificates after the two-year period does not entail the loss of tariff benefits where the goods form part of a consignment in respect of which there had been prior partial clearances in which the certificate was presented within the validity period and was verified and validated by the customs authorities. The Supreme Court dismissed this claim following the CJEU's response, and upheld the contested assessments as regards customs duties. The ruling serves as a reminder of the strict application of time limits in customs matters and the importance of maintaining rigorous documentary management in chain import operations.

III. ADMINISTRATIVE RULINGS

TEAC Ruling of 24 April 2026, on the application of the exemption for financial services to POS terminal commissions

In this ruling, the Central Economic-Administrative Court analyses the VAT treatment of commissions received by a payment institution for the provision, installation and maintenance of Point of Sale (POS) terminals supplied to merchants for the acceptance of card payments.



The claimant entity carried out, among other activities, acquiring services, consisting of the acceptance and management of card payments, which it declared as financial transactions exempt from

VAT under Article 20.One.18 of the VAT Law. It also considered that the commissions charged for the provision, installation and maintenance of POS terminals constituted ancillary supplies to that principal service, extending the exemption to them.

The Tax Inspectorate regularised the tax position on the grounds that the commissions for the delivery and maintenance of POS terminals constitute a separate service, subject to and not exempt from VAT, thereby increasing the taxable bases and the amounts of tax due. The resulting tax debt exceeded EUR 7.2 million.

In this regard, the TEAC upheld the criterion of the Tax Inspectorate and reiterated its previous doctrine, set out in the ruling of 23 June 2022. According to the Court, for a supply to fall within the exemption applicable to financial transactions under Article 20.One.18, it is not sufficient that it be necessary or indispensable for the performance of a payment transaction. The supply must fulfil the specific and essential functions of a financial transaction, that is to say, it must have the effect of transferring funds or modifying the legal and financial position of the parties.

From this perspective, the TEAC noted that the POS terminal is a mere technical or material support that enables merchants to accept card payments and transmit to the banking institution the data necessary for the transaction. However, the provision and maintenance of the device does not in itself produce a transfer of funds or alter the legal or financial position of the parties, being limited to facilitating the management of the payment.

Consequently, these services constitute a material or technical supply with its own substance, falling outside the scope of the exemption provided for financial transactions.

The Court also rejected the classification of the POS terminal provision and maintenance service as ancillary to the financial acquiring service. In the TEAC's view, the merchant contracting both services perceives that it receives two distinct supplies: on the one hand, the financial service of card payment management; and, on the other, the leasing or making available of the POS terminal necessary to accept such payments. The fact that the POS terminal is necessary for the payment operation does not automatically convert its provision or maintenance into an ancillary exempt supply.

As a result of the foregoing, the TEAC concluded that the POS terminal provision and maintenance services must be classified as an independent service, of a material or technical nature, subject to and not exempt from VAT, falling outside the scope of the exemption provided for financial transactions under Article 20.One.18 of the VAT Law.

However, the ruling also addresses the deductibility of input VAT incurred by the entity on goods and services used for the delivery and maintenance of POS terminals.



The entity invoked the application of the principle of full regularisation and requested recognition of its right to deduct the input VAT stated on the corrective invoices received from its supplier. The TEAC clarified that this is not strictly a case of refund of undue payments in respect of VAT incorrectly charged, but rather the exercise of the right to deduct input VAT. Insofar as the POS terminal delivery and maintenance service is classified as subject to and not exempt from VAT, the input VAT incurred on the acquisition of goods and services allocated to that activity is deductible pursuant to Article 94.One.1.a) of the VAT Law.

Consequently, the TEAC partially upheld the claim. On the one hand, it confirmed that the commissions for POS terminal provision and maintenance are subject to and not exempt from VAT and, at the same time, recognised the entity's right to deduct the input VAT linked to the provision of those services, as they are allocated to an activity giving rise to a right of deduction.

IV. BINDING RULINGS

V0213-26: application of the non-chargeability provision under the NRPPT when transport outside Spain is carried out by the customer

The General Directorate of Taxation (hereinafter, "GDT"), in its Binding Tax Ruling V0213-26 of 4 February 2026, analyses the application of the non-chargeability provision established for certain products manufactured in Spain that are intended to be dispatched outside the territory of application of the Special Tax on Non-Reusable Plastic Packaging (NRPPT).



The applicant entity is engaged in the manufacture of plastic film rolls, products falling within the objective scope of the tax. Part of its production is sold to customers located within and outside the territory of application of the tax and, in particular, to a customer established in Morocco. The question raised consists in determining whether the manufacturing entity may apply the non-chargeability provision of Article 73(b) of Law 7/2022 when it is the Moroccan customer itself that assumes the dispatch and transport of the rolls outside Spanish territory.

The GDT recalls that the Special Tax on Non-Reusable Plastic Packaging is an indirect tax levied on the use in Spain of non-reusable packaging containing plastic, whether presented empty or containing, protecting, handling, distributing or presenting goods. The tax also applies throughout Spanish territory, without prejudice to the regional tax regimes of the Basque Country and Navarra.



Regarding the non-chargeability provision, Article 73(b) of Law 7/2022 establishes that the manufacture of products falling within its objective scope shall not be subject to the tax where they are intended to be dispatched

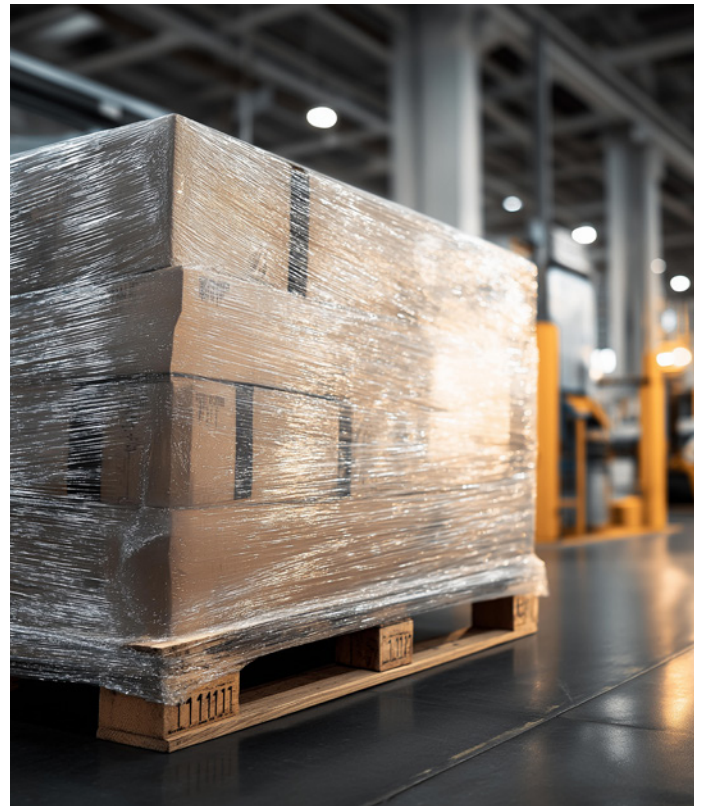
directly by the manufacturer, or by a third party in its name or on its behalf, to a territory other than the territory of application of the tax.

The effectiveness of this provision is conditional upon evidence of the actual departure of the products from the territory of application of the tax.

On this basis, the GDT concludes that, if it is not the manufacturing entity that dispatches the products directly outside the territory of application of the tax, nor a third party in its name or on its behalf, the non-chargeability provision of Article 73(b) is not applicable. Consequently, in the case at hand, the manufacturer cannot benefit from that provision when the transport to Morocco is assumed by the purchasing customer.

However, the ruling specifies that the customer established in Morocco, insofar as it acquires products falling within the objective scope of the tax and does not have the status of taxpayer, may request a refund of the amounts paid pursuant to Article 81(1)(d) of Law 7/2022, provided that it evidences the dispatch of the products outside the territory of application of the tax.

For these purposes, the GDT recalls that the effectiveness of the refund is conditional upon the facts supporting it being capable of proof before the State Tax Administration Agency by any means of evidence admissible in law, as well as upon evidence of payment of the tax.



V0383-26: Stamp Duty on declaration of existing building and horizontal division

The General Directorate of Taxation analyses the taxation under the Stamp Duty component of the Transfer Tax and Stamp Duty (ITPAJD) of a deed documenting a declaration of an existing building and a horizontal division.

The applicant is the owner of a building constructed in the year 2000, distributed from its origin over three floors: a ground-floor warehouse and two independent dwellings. However, the construction is recorded in the Land Registry as a single dwelling, and the intention is therefore to execute a deed of declaration of an existing building and subsequent horizontal division in order to reflect in the Registry the three properties already in existence.

The GDT recalls that, pursuant to Article 4 of the Consolidated Text of the ITPAJD Law, where a single document comprises several conventions separately subject to the tax, the duty corresponding to each of them shall be charged. Likewise, first copies of notarial deeds having as their object a quantity or valuable thing, containing registrable acts and not subject to other components of the tax, are taxed under the graduated rate of notarial documents of Stamp Duty.

On this basis, the ruling concludes that the transaction in question involves two distinct conventions: on the one hand, the declaration of an existing building and, on the other, the horizontal division.

Both transactions are subject to Stamp Duty, the taxable person being the applicant, as the person who requests or initiates the notarial document or in whose interest it is issued.



As regards the declaration of the existing building, the GDT notes that the taxable base is constituted by the actual cost of the building works declared.

For these purposes, that concept must not be equated with the market value of the property, but rather with the actual cost of the works carried out, since what is formalised for registration purposes is the works executed and not the transfer or overall valuation of the property.

As regards the horizontal division, the GDT recalls that this act allows the ownership of a building to be subdivided into private units, creating separate and independent registered properties with the allocation of participation coefficients. The deed establishing the horizontal property regime is subject to Stamp Duty as it meets the requirements of Article 31.2 of the Consolidated Text of the ITPAJD Law.

The taxable base of the horizontal division shall be constituted by the value of the resulting properties, determined on the basis of the value of the construction and the land on which it stands. On this point, the GDT specifies that, where the taxable base is determined on the basis of the value of immovable property, that value may not be lower than the cadastral reference value at the date of the chargeable event, unless the declared value, the price or the agreed consideration is higher.

In conclusion, the ruling confirms that the declaration of an existing building and the horizontal division constitute two transactions separately subject to Stamp Duty, with differentiated taxable bases: the actual cost of the works in the declaration of the existing building and the value of the resulting properties (including construction and land) in the horizontal division.



V0238-26: ITPAJD on capital reductions with return of contributions

The General Directorate of Taxation, in its Binding Tax Ruling V0238-26, analyses the chargeability of ITPAJD on a capital reduction with return of contributions by means of the allocation to the shareholders of units in investment funds owned by the company.

In the case at hand, the applicant is a shareholder and director of a company whose shareholders intend to resolve a capital reduction with return of contributions, receiving units in investment funds owned by the company. The question arises because the banking institution requires the filing of Form 600 in order to allocate those units to the shareholders.

The GDT states that, pursuant to Article 19 of the Consolidated Text of the ITPAJD Law, a reduction of share capital constitutes a corporate transaction subject to the tax. In this type of transaction, the taxable person is the shareholder who receives the assets or rights as a consequence of the capital reduction, irrespective of any stipulations that the parties may establish.

As regards the taxable base, Article 25 of the Consolidated Text of the ITPAJD Law provides that, in capital reductions and dissolutions of companies, the base shall coincide with the value of the assets and rights delivered to the shareholders, without deduction of expenses or debts. In the specific case, the taxable base shall be constituted by the value of the units in the investment funds allocated to the shareholders.

The ruling also notes that the applicable tax rate under the corporate transactions component is 1 per cent.

As regards the chargeable event, the GDT notes that, pursuant to Article 49 of the Consolidated Text of the ITPAJD Law, in corporate transactions the tax becomes chargeable on the day on which the taxable act is formalised. Therefore, in a capital reduction with return of contributions, the chargeable event occurs on the date of formalisation of the resolution, the relevant date for these purposes being the date of the public deed, unless the deed itself provides otherwise.

In conclusion, the capital reduction with return of contributions is subject to and not exempt from the corporate transactions component of ITPAJD. The shareholders shall be the taxable persons, the taxable base shall be determined by the value of the units received and the tax shall become chargeable on the date of formalisation of the resolution, from which date the period for filing Form 600 shall begin in accordance with the legislation of the competent Autonomous Community.



V0084-26: failure to issue invoices for advance payments in renovation works. Economic-administrative claim against the contractor

The General Directorate of Taxation, in Binding Tax Ruling V0084-26, analyses the case of a private individual who is carrying out the renovation of a dwelling and who, after making two payments to the person in charge of executing the works, has not received the corresponding invoices. Both the estimate and the receipts delivered state the charge of 21 per cent VAT, although the contractor avoids issuing the corresponding invoices. The question raised consists in determining whether there is any mechanism to compel the contractor to deliver those invoices.

The GDT first analyses the nature of the transaction. Works contracts only qualify as supplies of goods where their object is the construction or rehabilitation of a building and the contractor provides materials whose cost exceeds 40 per cent of the taxable base. From the information provided, it is inferred that the works do not have as their object the construction or rehabilitation of a building for VAT purposes, so the renovation works must be classified as a supply of services.

Pursuant to Article 75 of the VAT Law, in supplies of services the tax becomes chargeable when the taxable transactions are performed, executed or carried out. However, where there are advance payments prior to the occurrence of the chargeable event, VAT becomes chargeable at the time of total or partial collection of the price, in respect of the amounts actually received. Applying this rule, the two payments made by the applicant qualify as advance payments, so that the corresponding VAT would have become chargeable at the time of their collection and the contractor was required to issue the corresponding invoice for each of the payments received.

The GDT recalls that the obligation to issue and deliver invoices constitutes a formal tax obligation, pursuant to Article 29 of the General Tax Law and Article 164. One.3 of the VAT Law, as developed in Article 2 of the Invoicing Regulations. As regards the remedy against non-compliance, disputes relating to the charging of the tax are of a tax nature for the purposes of economic-administrative claims.

Article 227(4) of the General Tax Law allows claims to be filed through that channel in respect of acts or omissions by private parties relating to the obligation to charge and bear the legally prescribed charge and the obligation to issue, deliver and correct invoices. Consequently, the failure to deliver an invoice may be challenged through the economic-administrative procedure, and the claimant may even issue the invoice in the name and on behalf of the defaulting party if the latter does not comply with the ruling of the Economic-Administrative Court, subject to prior notification to the Court and to the party in default.

V0177-26: donations from international organisations received by a foundation. Deduction of input VAT

The General Directorate of Taxation, in Binding Tax Ruling V0177-26, analyses whether a foundation that receives donations and contributions from various international organisations to carry out cooperation projects may deduct the input VAT incurred on purchases and contracts linked to those projects. The GDT recalls that a foundation will only have the status of taxable person for VAT purposes where it organises on its own account personal and material resources to make supplies of goods or services for consideration. Conversely, if it merely carries out gratuitous transactions, or transactions financed by contributions that do not constitute consideration for specific transactions, it will act as a final consumer and will not be entitled to deduct input VAT.



The ruling specifies that it is not sufficient to look at the denomination of the amounts received; rather, it is necessary to determine whether the donations or contributions received remunerate a transaction carried out by the foundation or whether they constitute genuine gratuitous contributions intended to finance its activity.



If the amounts are freely determined and not as consideration for specific supplies of goods or services, they will not be subject to VAT. Furthermore, the ruling analyses whether such contributions could be classified as subsidies directly linked to the price of the transactions, concluding that, if the donations are intended solely to finance the general activity of the foundation, they will not be so classified and will not form part of the taxable base of the tax.

In conclusion, the foundation will only be entitled to deduction if it acts as a taxable person and the goods or services acquired are used for taxable and non-exempt transactions; if the contributions received are genuine donations to finance gratuitous activities, the foundation will act as a final consumer and will not be entitled to deduct input VAT.

V0182-26: intermediation services in sales of goods between third countries. Place of supply rule where the recipient is a non-EU established taxable person

The General Directorate of Taxation, in Binding Tax Ruling V0182-26, analyses the VAT treatment of services provided by a taxable person established in the territory of application of the tax who acts as an intermediary or commission agent in sales of goods between non-EU countries, its customers being taxable persons not established in the Community and the goods not passing through the territory of application of Spanish VAT.

The GDT recalls that intermediation, agency or commission transactions in which the agent or commission agent acts in the name of another party qualify as supplies of services pursuant to Article 11.Two.15 of the VAT Law. As services supplied to taxable persons, the general rule in Article 69.One.1 of the VAT Law applies, pursuant to which services are deemed to be supplied in the territory of application of the tax where the recipient has in that territory the seat of its economic activity or a fixed establishment to which the service is supplied.

Since the recipients are not established in the Community, the intermediation services are not located in Spain and are therefore not subject to Spanish VAT.



V0203-26: management of securitisation funds and services delegated to third parties. Scope of the financial exemption under VAT

The General Directorate of Taxation, in Binding Tax Ruling V0203-26, analyses the VAT treatment of services linked to the management of a securitisation fund to which a transferor entity has assigned credit rights derived from loans in default and of doubtful recovery.

The management company of the fund intends to delegate the administration of the credit portfolios to companies specialising in the management of doubtful loans and, additionally, to delegate to a procurement adviser the selection, coordination and supervision of those administrators, as well as advice on the sale of the assets.

The GDT starts from the exemption provided for in Article 20.One.18.n) of the VAT Law, which declares exempt the management and custody of, among others, Asset Securitisation Funds. According to the CJEU case law, services provided by a third party may fall within the exemption where they form a distinct set, considered as a whole, and are specific and essential for the management of the fund, and must have an intrinsic link with the management proper of the fund and be provided exclusively for that purpose.

Applying these criteria, the GDT concludes that the services provided by the management company to the securitisation fund are subject to and exempt from VAT, as they fall directly within the objective scope of the exemption. The services provided by the procurement adviser, consisting of selecting and supervising the administrators and advising on the sale of assets, may also be subject to and exempt from VAT, as they have an intrinsic link with the management of the fund, provided that the delegation does not turn the management company into a merely instrumental or empty entity.

The conclusion is different as regards the services provided by the administrators of the credit portfolios, consisting of the management and recovery of the credits assigned to the fund. The GDT notes that the subsequent management of credits previously granted and assigned to a third party constitutes a supply of services subject to and not exempt from VAT, so that those administration services will be subject to and not exempt from the tax.

V0388-26: transfer of a hotel complex and its productive unit. Application of the non-chargeability provision under Article 7.1 of the VAT Law

The General Directorate of Taxation, in Binding Tax Ruling V0388-26, analyses a reorganisation transaction within a hotel group in which two distinct transfers take place.

On the one hand, the entity owning a hotel complex transfers to another group company the immovable property, furniture, installations, equipment and fittings comprising the hotel, with the acquirer being subrogated into the position of lessor under the existing lease agreement.

On the other hand, another group entity acquires from the current lessee and operator of the hotel the productive unit of hotel operation, comprising the material and human resources necessary to continue the hotel activity, with the exception of the immovable property. The question consists in determining whether both transfers may benefit from the non-chargeability provision under Article 7.1 of the VAT Law, which declares not subject to the tax the transfer of a set of elements that constitute or are capable of constituting an autonomous economic unit capable of carrying on a business or professional activity by its own means.

The GDT concludes that the transfer of the immovable property, furniture and installations of the hotel, not being accompanied by a sufficient organisational structure to carry on the hotel activity (without human resources or other organisational elements allocated to the operation), constitutes a mere transfer of assets subject to VAT, the non-chargeability provision not being applicable.

Each element transferred must be taxed in accordance with the rules applicable to it, and the immovable property may be subject to and exempt from VAT as second supplies of buildings, with the possibility of waiving the exemption. The conclusion is different as regards the transfer of the productive unit of hotel operation, which includes the material and human resources necessary to carry on the activity.

The GDT recalls that, according to the CJEU case law, the absence of a transfer of the immovable property does not prevent the existence of an autonomous economic unit from being established where the acquirer can have the use of the property on a lasting basis by means of a lease. In the case at hand, the acquiring entity will be subrogated as lessee of the hotel complex, so that the transfer of the productive unit may be not subject to VAT pursuant to Article 7.1 of the VAT Law.



V0602-26: rounding of VAT amounts on invoices. Applicable criteria where there are differences of cents

The General Directorate of Taxation analyses the case of an entity that purchases a product through the "Amazon Business" programme and observes that the selling entity has rounded up the VAT amount.

The GDT recalls that tax legislation does not prescribe how many decimal places traders may use in setting their prices, and cites the CJEU case law according to which, in the absence of a specific EU rule, it is for the Member States to determine the methods of rounding VAT amounts, subject to the principles of fiscal neutrality and proportionality.

The Invoicing Regulations require the invoice to include the data necessary to determine the taxable base, the unit price exclusive of tax and the amount of tax charged, but do not require the unit price to be expressed with a specific number of decimal places nor impose a single method of calculation.

In conclusion, nothing prevents unit prices from being expressed with more than two decimal places and being used to calculate VAT amounts.

In any event, the total amounts payable or receivable must be rounded to the nearest cent, and the amounts so calculated are those that must be stated on the invoice and declared, the invoicing requirements being deemed to be met provided that the information is sufficient to identify the transaction, even if there are insignificant discrepancies arising from rounding.



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